

A

REVIEW OF THE STATE OF THE BRITISH NATION.

Thursday, June 12. 1709.

I Am now to tell the World, what I mean by the Frauds and Cheats, the Clandestine Trade, the Hardships, &c. which I have been so long talking of, and which *England* sustaining by the Union, moved the H. of Commons twice to attempt their Redress; and when I have described them a little, I shall examine Matters and Things, as to what has been attempted to cure and prevent them.

Upon the declaring the Union, and that it should take Effect the 1st of May, it was presently visible to all the World, that the *Scots* being to enjoy a free Intercourse of Trade, with the *South of Britain*, all Goods imported into *Scotland*, before the said 1st of May, and paying the lawful Customs or Excises demanded there, fairly entered and discharged, should from thenceforth, without any other Demand, Hindrance or Mo-

lestion, be freely admitted into all the Ports of *England*; and of this I have given an Historical Narration already.

'Tis without all Dispute, that the true Intent and Meaning, and the only true Intent and Meaning of this Article was, that the Subjects or Natives of the *North Part of Britain* should have a free Admission into all the Parts of the *South*, without any Payment, Taxation or Imposition, other than what they paid themselves: Or, to put this into directer Terms— That the Trade of *North Britain* should be entirely free in all Respects, as that of the *South*— And the Word *free Intercourse* implies the very thing I am upon.

Now I must confess, tho' I have been pressing *England* to bear the Inconveniences; yet I dare not say, that because the literal Sense of this Article does give the *South Part*

Part a Disadvantage, that therefore the Intent of the Law, and the true Design of the Legislators on both sides, shall not at all be regarded— In the Course of our Law, we have a common Distinction of Right; there is a legal Right, and an equitable Right; common Law decides the first, Chancery, which in English Acceptation is Conscience, decides the last; where the Letter of the Law will in Strictness of its Observation outstretch the Intent of the Law, Conscience governs, and is a Regulation put upon legal Severity; this is that Severity, which is the Foundation of a known Maxim, *Summum Ius summa Injuria*, and in the Course of Subordination, this Court of Conscience is always superior, and the equitable Right shall at all times over-rule the legal.

I apply the Case thus— 'Tis true by the Letter of the Law, the Scots are to enjoy a full and free Intercourse of Trade, that and litteral Expression of a free and full Intercourse of Trade, between the Kingdoms, may, and I believe does, litterally include, that all Goods legally imported into either, shall be freely admitted into the other, let the Importers be who they will.

But now, Gentlemen, shall the QUEEN have no Equity? Shall the Government have no Redress against Injury, where the Letter of the Intention of the Law seems to be strained one against another? Shall there be no Court of Conscience erected between the Nations, in a thing that 'tis evident one side is injur'd in, and the other do not defend? — Shall the Union be stretch't by designing Knaves, and shall honest Men be bound to prote&t them in it? This is a very hard Case, and I think with Submission, leaves very great Reason for the Debate to have been brought into Parliament; of which hereafter.

But I come to the Frauds.

1. The Importation of Wine and Brandy, and other Goods, prohibited, or on which high Duties are payable in England by Persons not at all Subjects of Scotland, or concern'd before with the Scots Trade, and only with Design to transport those Goods into England, and so defraud the Government there of those high Duties, and put Money into their own Pockets. This is one of the Frauds.

Will any Man say, that this had its Foundation in the Intent and Meaning of the Law, and that it was so design'd on either the English or Scots Side; that it was design'd by the English, that England should thus be injur'd by her own Subjects, under the Colour and Cover of the Scots free Intercourse; that it was design'd by Scotland, that the Foreigners should, by the Advantage of the 4th Article, come and bring foreign Goods into Scotland, on purpose to cheat the English Government of the Customs?

If then this was not in the Intent and Meaning of the Union, where is the Fraud of the Treaty? If the Scots Freedom and Intercourse of Trade being preserv'd, Laws were made in England to restrain and prevent those Frauds of other People, who taking Advantage of the Letter of the Treaty, impose upon both Kingdoms, contrary to the true Intent and Meaning of the Union in general.

This Way of arguing is, I think, so just a Vindication of the Reasonableness of Her Majesty's Speech to the Parliament— Moving them to consider, how in the best Manner possible to prevent the Inconveniences arising to the Trade of England by the Interval between that Time and the 1st of May; and of all the H. of Commons did afterward, that I think, I need say no more at all to it.

Nor does this at all enter into the different Sentiments of either House, or do I lessen the Justice of one House, by applauding the Generosity of the other, and therefore stating this Matter right, reconciles it all.

The QUEEN, moved by the Complaints of the Merchants, alarm'd at the Rumour, however politickly rais'd, of the vast Importations into Scotland, and the horrid Practices about Draw-backs, gives the Houses a Recess, and calls them together again to see, if possible, the Evil might have a Remedy; That is, to see if it might have a LEGAL REMEDY, not to prompt the Houses to make Infractions into the Union, 'tis very plain, that could not be the Design.

The H. of C... first vote the Grievance; that it is ruinous to the fair Trader, prejudicial to the QUEEN's Revenue, and destructive to the

the Trade of the Kingdom, or to that Purpose ; for at this Distance I have not the Votes.

To remedy is, and yet preserve the Union too, they observe, the true Intent and Meaning of the 4th Article was to give a free Intercourse of Trade to Scotland, and accordingly they add a saving Clause for the Scots, and then *Enact* against the other— Here was no Manner of Injustice design'd, but the equitable Part of the Law considered, and a Distinction made between the Letter of the Law, and the true Intent and Meaning of it.

The House of Lords, and therein I include also the QUEEN, tho' it did not personally and parliamentarily come before her Majesty, taking this Method into their Consideration— They first own the Equity and Reasonableness of the Thing, and send for the Judges to be farther satisfy'd, if it might correspond with, or receive no Inconvenience from the Union ; the Judges declining their Opinion, and the Matter seeming doubtful, the Lords, in meer Generosity and Tenderness to the Scots, throw it out, choosing to leave England to struggle as well as she could with the Damage sustain'd, than give the Scots the least Shadow of Distrust, that in doubtful Cases it should be given against them, or that to save our selves, we should venture to clash with the Treaty ; and this I have been large upon already.

But pray take this with you, Gentlemen, that the Lords did by no means in this Proceeding grant, that these Things were just, that it was no Injury to England, no Fraud, no using the Union to an End it was on neither side design'd for ; they highly approv'd of this, that it was every thing the Commons had voted it to be, and that if it could wish Safety to the Union, it ought to be prevented, only they would not tread on the Brink of the Treaty, nor do the least Thing, tho' just and in its Nature reasonable, that should give any Jealousie to the Scots of their being disregarded, or the Treaty being invaded.

Thus far I think, the Proceedings on both sides have been just, and I do not hear, I confess, so much Clamour at the

Proceedings of the H. of C—s in the North, as I do from the South, which I take to proceed from this ; that the Persons, who have committed the Frauds, live in the South, and 'tis natural to hear the Noise from that Part which feels the Smart.

If there has been any Complaint in the North, it proceeds from their Fears, and those Fears are put into their Heads too, by false Reports, and malicious Spreaders of Forgeries and Suggestions ; that their Intercourse of Trade, *literally* theirs, shall be stop't by the English— Pray, Gentlemen, mark it, I say again, the Scots make no Complaint of your taking all just Methods to restrain the Frauds in Trade above-mentioned, they freely leave it to you, to do as your own Law will direct ; they are not concerned what Tricks your Lawyers find out to prevent the foreign Importations, — but 'tis stopping their own Trade, their immediate free Intercourse, and preventing the Import of the true and fair Effects of their own Property in Trade, *which they are alarm'd at*, and which the busie and projecting Enemies of the publick Peace persuade them you will do ; this is their Grievance, and this the Case in hand as to them — For your own People, if the Law will pinch them, they say, *do it with all their Hearts*.

I am now speaking the Reason and Nature of the Thing, not my own private Opinion, I shall give you that after, as I have frankly done before, nor will I debate here the Authority, the very *Letter of the Treaty* ought to obtain, or whether it were not to be wish'd, the Grievance was not so great, but it might be born with ; that all Murmur and Complaint, however ill ground'd, should be taken away on either side : But I confess, the Disease is a great one, and the Cure very needful, and the Endeavours to cure it legally are so much the more justifiable.

And yet I am still as I was ever of Opinion, the Grievance in the particular Article of Wine and Brandy is, as I said before, a mere Trifle compared to the Clamour has been rais'd upon it ; and were there no other Grievance in it, were the Customs of those two Articles, all that is to be complain'd of, I should still say, BEAR IT, to remove